



Office of the Attorney General

State of Texas

January 10, 1997

DAN MORALES

ATTORNEY GENERAL

Ms. Sheree L. Rabe
Assistant City Attorney
City of Georgetown
P. O. Box 409
Georgetown, Texas 78627-0409

OR97-0045

Dear Ms. Rabe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102837.

The City of Georgetown (the "city") received an open records request for the personnel records of a former police officer. You state that some information responsive to the request will be released to the requestor after redactions have been made. You have submitted Exhibits B through E as responsive to the request, and contend that some of this information is excepted from required public disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and have reviewed the documents at issue.

We first address your assertion that the home addresses, phone numbers, social security numbers, and information about family members is excepted from disclosure under section 552.117. Section 552.117(1) excepts from disclosure the social security number, information that reveals whether a person has family members, and the current and former home addresses and telephone numbers of a current or former official or employee of a governmental body that has elected to keep this information protected under section 552.024. Open Records Decision No. 622 (1994). Section 552.117(2) also protects this information from disclosure for all peace officers, as defined by article 2.12 of the Code of Criminal Procedure, as well as security officers commissioned under section 51.212 of the Education Code.² The person who is the subject of this request for information appears to be a *former* peace officer. Thus, the requested information

¹In your letter to this office, you also raise sections 552.024 and 552.117 of the Government Code for some of the submitted information.

²Peace and security officers are not required to make an election under section 552.024 to protect this information. Under section 552.117(2), the information is automatically excepted from disclosure for peace and security officers.

contains the current or former home address and phone number, social security number, or family information of a person who is a *former* official or employee. Since the former peace officer made a request for confidentiality under section 552.024 before this request for information was received by the city, the requested information must be withheld from the requestor under section 552.117. See Open Records Decision No. 530 (1989). Additionally, social security numbers may also be confidential under the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). We note that some of the information you seek to withhold pursuant to section 552.117 may not be withheld and must be released. Accordingly, we have noted on the marked records the information which the city may not withhold pursuant to this exception.

You also claim that some information in the submitted records is protected by a right of privacy under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Industrial Foundation*, 540 S.W.2d at 683; see Open Records Decision Nos. 339 (1982), 205 (1978). Additionally, this office has found that the following types of information are excepted from required public disclosure under constitutional³ or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family

³Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The scope of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Consequently, to the extent that Exhibits B through E include information subject to privacy, the city must withhold the information. However, after reviewing the information submitted as Exhibit C, we conclude that this particular information is not protected by privacy, and therefore, may not be withheld from required disclosure.

We further note that this office has determined that some personal financial information of public employees is protected by common-law privacy and must be withheld from disclosure under section 552.101. Generally, information concerning financial transactions between an employee and a public employer is of legitimate public interest. Open Records Decision Nos. 600 (1992) (where transaction is funded in part by the state, it involves the employee in transaction with the state, and is not protected by privacy), 545 (1990), 523 (1989). For example, information reflecting mandatory state retirement system contributions are subject to disclosure under chapter 552 of the Government Code. Open Records Decision Nos. 600 (1992).

However, this office has determined that some personal financial information is private. Information is excepted from disclosure if it relates to a voluntary investment that the employee made in an optional benefits plan offered by the city. For example, information is protected from disclosure if it relates to an employee's personal financial decisions to allocate portions of his compensation to optional benefits which involve no state funding. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1990) (deferred compensation plan). The employees' optional coverages generally will be funded by the employee and not the state. Optional benefits may include participation in TexFlex (employee benefit plan that allows employee to choose between cash compensation and one or more tax-exempt fringe benefits); participation in deferred compensation plans, including purchase of saving bonds; and purchase of optional life, accident, dependent life or disability insurance. Open Records Decision Nos. 600 (1992). Additionally, this office has determined that information revealing the designation of beneficiaries of insurance and retirement funds is confidential under the right of privacy and that direct deposit authorization forms are also excepted from required public disclosure under section 552.101. *Id.* at 10-12.⁴ In addition to your markings and for your convenience, we have marked some of the types of information which our office considers to be confidential and should be withheld pursuant to section 552.101 of the Government Code. However, we advise you to carefully review the requested information to redact the confidential portions of the records. *See* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

⁴This office has held that "direct deposit authorization forms" showing an employee's decision to enroll in direct deposit of his compensation, the name of the bank, and the account number are excepted from disclosure under section 552.101. Open Records Decision Nos. 600 (1992) at 11-12.

Section 552.101 also encompasses information protected by statutes. We note that the annual statements pertaining to participation in the Texas Municipal Retirement System are made confidential under section 855.115 of the Government Code and may not be released.

The city also contends that medical or psychological records are excepted from disclosure under section 552.101. Health & Safety Code § 611.002-.004 (communications between patient and a professional are confidential). You contend that the former officer's psychological evaluations and applications are excepted from required public disclosure pursuant to section 552.101 of the Government Code. Section 415.057 of the Government Code, however, specifically deals with the confidentiality of the results of the psychological examinations.⁵ Section 415.057 provides, in pertinent part:

(a) The [Commission on Law Enforcement Officer Standards and Education] may not license a person as an officer or county jailer unless the person has been:

(1) examined by a licensed psychologist or psychiatrist and declared in writing by the psychologist or psychiatrist to be in satisfactory psychological and emotional health to be the type of officer for which a license is sought;

(b) The agency hiring the person to be licensed as an officer or county jailer shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each of the declarations and shall keep a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.* [Emphasis added.]

Based upon section 415.057(b), we agree that the results of the psychological examinations, Exhibit D, of the former officer are confidential and may not be released to the public.

Additionally, in reviewing the submitted records, we note the presence of other medical information. Medical records or communications between a physician and patient are governed by the Medical Practice Act, V.T.C.S. art. 4495b, § 5.08 (b), (c), and may be disclosed only as permitted under section 5.08(b). Communications between a patient and a mental health professional or records concerning the identity, diagnosis, evaluation, or treatment of a patient under Health and Safety Code section 611.002(a), may be disclosed only as permitted by section 611.002(b). Certain medical information that is

⁵Chapter 415 of the Government Code deals with Law Enforcement Officer Standards and Education.

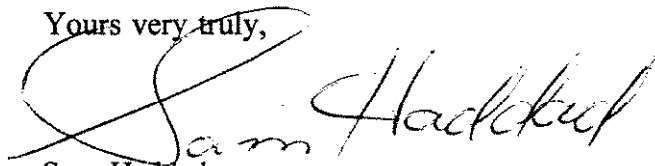
obtained by an employer regarding employees and conditional job offer applicants pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, is also confidential. Open Records Decision No. 641 (1996).

Included in the submitted records, Exhibit E, is a copy of Form W-4, titled Employee's Withholding Allowance Certificate, of the Internal Revenue Service, which has been completed by an employee of the city. A W-4 form is confidential as a matter of law by title 26, section 6103(a), of the United States Code. 26 U.S.C. § 6103(a); Open Records Decision No. 600 (1992) at 8-9 (concluding that employee W-4 forms are excepted from public disclosure by 26 U.S.C. § 6103(a)). Accordingly, the W-4 form, Exhibit E, must be withheld under section 552.101 of the Government Code.

Finally, we note that CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is deemed confidential by federal and state law. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. Therefore, the city must withhold any CHRI from the requestor.

In summary, except as noted above, the submitted documents must be released.⁶ We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a horizontal line.

Sam Haddad
Assistant Attorney General
Open Records Division

⁶We have marked some of the types of information that must be withheld under section 552.101.

SH/ch

Ref.: ID# 102837

Enclosures: Marked documents

cc: Ms. Beth Seaman
114 Northcross Road
Georgetown, Texas 78628
(w/o enclosures)